

**A SUBSTITUTE RESOLUTION BY
FINANCE/EXECUTIVE COMMITTEE**

09-R-2154

A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO A LICENSED USER AGREEMENT WITH TICKETMASTER L.L.C., FOR TICKET SALES RIGHTS AT THE BOISFEUILLET JONES ATLANTA CIVIC CENTER; AND FOR OTHER PURPOSES.

WHEREAS, the Boisfeuillet Jones Atlanta Civic Center (“Civic Center”) is an event hall that provides a host of entertainment attractions such as concerts, exhibits, shows and other events in the City of Atlanta (“City”); and

WHEREAS, the Civic Center is operated as a City enterprise fund; and

WHEREAS, the City, by and through the Civic Center, desires to enter into a Licensed User Agreement (“Agreement”) with Ticketmaster L.L.C. (“Ticketmaster”); and

WHEREAS, the Agreement would allow Ticketmaster the right to be the exclusive seller of tickets to every attraction at the Civic Center, except that the Civic Center would still operate or cause to be operated the Civic Center Box Office; and

WHEREAS, the Agreement will provide substantial financial benefit to the Civic Center through ticket sale royalties and a signing bonus, both of which are more fully described in Exhibit “A” (hereto attached as Exhibit “A”); and

WHEREAS, the term of this Agreement shall be for a period of three (3) years with successive two (2) year renewal options as more fully described in Exhibit “A”; and

WHEREAS, the Director of the Civic Center and the Chief Procurement Officer have recommended that a Licensed User Agreement be executed between the City and Ticketmaster for the provision of ticket sales at the Civic Center.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

The Mayor of her designee, on behalf of the City, is hereby authorized to enter into a Licensed User Agreement with Ticketmaster L.L.C., and the terms of said Agreement shall provide at a minimum that:

- 1) Ticketmaster shall have the right to be the exclusive seller of tickets to every attraction at the Civic Center, except that the Civic Center may still operate or cause to be operated the Civic Center Box Office.
- 2) Ticketmaster shall provide to the Civic Center 20% of the Ticketmaster Convenience Charge received per ticket, and 25% of the Ticketmaster Processing Fee received per ticket.
- 3) Ticketmaster shall provide to the Civic Center a one-time signing bonus of \$50,000.

BE IT FURTHER RESOLVED, that the term of this Agreement shall be for a period of three (3) years. The Agreement may be renewed for successive two-year terms contingent upon written approval by Ticketmaster and the Civic Center Director. Council approval shall not be required for approval of renewals.

BE IT FURTHER RESOLVED, that all funds received by the Civic Center pursuant to the Agreement be deposited into:

5581	FUND	CIVIC CENTER REVENUE FUND
000002	GL DEPT	DEFAULT/REVENUE DEPARTMENT
3473001	REVENUE/ ACCT	FEES; CIVIC CENTER

BE IT FURTHER RESOLVED, that the City Attorney or his designee is hereby authorized to prepare an appropriate Agreement for execution by the Mayor.

BE IT FINALLY RESOLVED, that this Agreement shall not become binding on the City, and the City shall incur no liability upon the same until the Agreement has been approved by the City Attorney or his designee as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to Ticketmaster L.L.C.



ticketmaster

LICENSED USER AGREEMENT

THIS LICENSED USER AGREEMENT ("Agreement") is made and entered into as of November __, 2009 and is effective as of December 1, 2009 ("Effective Date"), by and between Ticketmaster L.L.C., a Virginia limited liability company ("Ticketmaster"), and the City of Atlanta, by and through the Boisfeuillet Jones Atlanta Civic Center ("Principal"). This Agreement consists of this Licensed User Agreement and Exhibit A, Compensation, Exhibit B, Hardware, and any other Exhibits attached hereto which are incorporated herein by this reference. The meanings of all capitalized terms used in this Agreement are set forth in Section 17 hereof. This Agreement, upon full execution, shall supersede and replace that certain Facility Box Office Hardware User Agreement dated as of May 2, 2008, by and between Ticketmaster and Principal, which shall thereafter be null, void, and of no further force or effect.

In consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. **TERM:** The initial term of this Agreement shall begin on the Effective Date and shall continue through the third (3rd) anniversary hereof (the "Term"). Thereafter, the Term of this Agreement may be renewed for successive two (2) year periods, provided the Director of the Boisfeuillet Jones Atlanta Civic Center ("Civic Center") notifies Ticketmaster in writing, not less than thirty (30) nor more than one hundred twenty (120) days prior to the end of the initial Term or the then current renewal period, of its intention to renew this Agreement. Each twelve (12) month period commencing on December 1 and continuing through the following November 30 shall be a "Contract Year" as such term is used herein.

2. **TICKET SALES RIGHTS; EXCLUSIVITY:**

(a) **Grant of Rights:** Principal hereby grants to Ticketmaster, and Ticketmaster accepts from Principal, the right during the Term of this Agreement, to be the exclusive seller, as Principal's agent, of all Tickets for the Sellable Capacity for every Attraction via any and all means and methods, including on the Internet, by telephone, computer, IVR, outlets, television, clubs, auctions, VIP packages, presales, upsells, or by any other means of distribution, whether existing now or at any time in the future, except as set forth in Section 2(b) below. Principal shall ensure that the entire Sellable Capacity for every Attraction shall be made available for distribution on the TM System.

(b) **Sales by Principal:** Subject to the terms of this Section 2, Principal retains the right to: (i) sell single Tickets from the Facility Box Office to persons physically present at the Facility Box Office; (ii) sell Season/Contract Tickets; (iii) conduct Group Sales of Tickets; (iv) allow an organization that leases the Civic Center Exhibit Hall to sell exhibit tickets at a Civic Center Box Office; and (iv) provide a reasonable number of House Seats for any Attraction.

(c) **No Third Party Systems or Services:** Principal shall not directly or indirectly sponsor, promote, advertise, authorize or permit the use of any third party that promotes, engages in or facilitates the sale, resale or issuance of tickets.

(d) **No Minimum Sales:** It is agreed and understood that neither Ticketmaster nor Principal guarantees or will guarantee that any minimum or fixed number of Tickets will be sold through the TM System for any Attraction.

(e) **Acknowledgement by Principal:** Principal acknowledges that Ticketmaster acts as the agent of certain third parties that may be a direct or indirect competitor of Principal. Principal also acknowledges that Ticketmaster has entered and may in the future (including during the Term of this Agreement) enter into new business relationships with other third parties, including those in the entertainment and sports industry, such as performers who perform at the Facility, for a variety of services. Principal further acknowledges that any such sales or services or solicitations to provide such sales or services as contemplated under this subsection do not compete with Principal or conflict with this Agreement or Ticketmaster's rights, duties or obligations under this Agreement.

3. **COMPENSATION:**

(a) **Ticketmaster Charges and Fees:** In consideration for Ticketmaster's services provided hereunder as an agent of Principal, Ticketmaster shall be entitled to assess and receive charges and fees in the amounts set forth on Exhibit A, all of which charges and fees shall be assessed against consumers, except for Inside Charges, which shall be assessed against Principal.

(b) **Electronic Payments:**

(i) **Sales by Ticketmaster via Telephone Sales and Internet Sales:** Payment authorization and processing fees with respect to Tickets purchased with credit cards, debit cards, gift cards or any other electronic methods of payment ("Electronic Payment Fees") shall be passed on to Principal or the Ticket seller, as applicable, at the rates set forth on Exhibit A, which percentage rates shall be deducted by Ticketmaster from the Ticket sales proceeds, or, at Principal's option, upon notice to Ticketmaster, the Convenience Charge may be adjusted to include Principal's portion of such Electronic Payment Fees, provided that the Convenience Charge will be rounded up to the nearest nickel.

(ii) **Sales at Outlets:** With respect to purchases at Outlets via electronic payment, the Electronic Payment Fees shall be passed on to the ticket purchaser at the rate set forth on Exhibit A by increasing the applicable Convenience Charge set forth on Exhibit A by the amount of such Electronic Payment Fees, provided that the Convenience Charge will be rounded up to the nearest \$0.05.

(c) **Compensation to Principal:**

(i) **Principal's Royalties:** Principal shall be entitled to receive Ticket sales royalties (collectively, "Royalties") from Ticketmaster in the amounts set

forth on Exhibit A with respect to each Ticketmaster fee set forth on Exhibit A to the extent received (and not refunded) by Ticketmaster. Notwithstanding the above, Electronic Payment Fees related to any Ticketmaster fees, increases in interbank rates, and increases to postal rates shall be deducted from the applicable fees before the Royalties are calculated, and taxes related to any Ticketmaster fees may be deducted from the applicable fees before the Royalties are calculated.

(d) **Signing Bonus:** Within thirty (30) days of the full execution of the Agreement, Ticketmaster shall pay Principal a one-time signing bonus ("Signing Bonus") in the amount of Fifty Thousand Dollars (\$50,000). Ticketmaster's agreement to provide the Signing Bonus to Principal is based upon Ticketmaster's exclusive rights to sell Tickets for Attractions during the Term, except as set forth in section 2(b) above, and is contingent upon and subject to certain terms as described below. In the event that Principal terminates the Agreement before November 30, 2012, then Principal shall return to Ticketmaster, within fourteen (14) days of such termination or Attractions Termination, an amount equal to \$833.33 for each remaining month of the Term. Any return of any portion of the Signing Bonus by Principal shall be by wire transfer or certified check.

4. LICENSE AND USE OF HARDWARE AND SOFTWARE:

(a) **License:** Ticketmaster hereby grants Principal a non-exclusive, non-transferable license to use the Hardware and Software (collectively, the "License") in exchange for the fees set forth herein.

(b) **Use:** The Hardware and Software and all related materials may only be used by Principal in connection with the Attractions and only with systems used, operated and owned by Ticketmaster, and only for the purposes stated in this Agreement, and may not be utilized by or in connection with services, software, hardware or systems provided or supplied by any third party. Principal shall use the Hardware and Software in a careful and proper manner and shall comply with and conform to all federal, state, county, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Hardware and Software including, but not limited to, federal, state or other laws applicable to commercial emails. Except as otherwise provided in the immediately preceding sentence, Principal hereby agrees: (i) not to permit copying or reproduction of the Hardware or Software in any manner, including without limitation, use in a sharing arrangement or transmission over the Internet or over e-mail and similar electronic transmission; (ii) not to disassemble, re-manufacture, repair, re-configure, enhance, upgrade, modify, translate, adapt, create derivative works from or of, decompile or reverse engineer the Software in any way nor merge them into any other program for any purpose; (iii) not to transfer, license or sub-license, assign, rent, sell, grant, publish, disclose, display, dispose of or otherwise make available the Software, or any rights therein or copies or derivatives thereof, including other templates or working systems; (iv) not to delete, remove, change or otherwise alter any trademarks, copyright notices or other proprietary marks in or on the Hardware or Software, or any copies, modifications or partial copies thereof; and (v) not to "hack," or attempt to "hack," any of the Software, the servers on which the Software is hosted or any other portion of the

Ticketmaster network, or otherwise attempt to circumvent, or navigate outside of, the borders of such Software servers in any manner whatsoever.

(c) **Passwords:** Principal agrees that use of the TM System by Principal shall be restricted to a reasonable number of Principal's personnel having passwords in the event that Ticketmaster assigns such passwords. Such passwords shall not be transferable without the written permission of Ticketmaster, which permission shall not be unreasonably delayed or withheld. Upon Ticketmaster's reasonable request, Principal (i) shall identify, as the case may be, the users (by name, position and site address), who use or view the TM System or from where the TM System is used, and (ii) shall provide to Ticketmaster access to any database which records access to the TM System.

5. **INSTALLATION AND SET-UP:**

(a) **Hardware Installation:** Ticketmaster will install the Hardware and provide Principal with access to the Software. Principal will provide (i) connectivity and interfacing that satisfy Ticketmaster's minimum system requirements and (ii) unless otherwise agreed to between the parties, any type of equipment and technology necessary to assist Ticketmaster in completing the installation of the Software and Hardware. Ticketmaster shall have no responsibility for any internal wiring or cabling (e.g., electrical, data lines, etc.) necessary for installation, operation or for proper functioning of the TM System at the Facility. The cost of all line connections between the central computer facility and the Facility and all monthly line costs with respect to the operation of the TM System between the Facility and the central computer facility shall be borne solely by Principal.

(b) **Attraction Set-Up:** In order to effectively utilize Ticketmaster's distribution technologies, within a reasonable time before (but in no event less than the time period described below) the scheduled on-sale date of Tickets for each Attraction (the "On-Sale Date"), Principal shall furnish Ticketmaster with all necessary information with respect to the Attraction, including, without limitation, seating layout of the Facility, Ticket structure, discounts permissible, Attraction Taxes, any information necessary to calculate Attraction Taxes, if applicable, Ticket header information, logos, entry information, vision and hearing information, wheelchair and other accessible seating information and such other information as is necessary for the proper sale of Tickets (collectively, the "Set-Up Information"). The parties intend that all accessible seating Tickets that are available for sale to persons desiring accessible seating shall be made available for sale on the TM System and such accessible seating Tickets shall not be released into the general pool of Tickets that are available for sale until forty-eight (48) hours before an Attraction. Principal must provide the Set-Up Information to Ticketmaster at least five (5) business days prior to the On-Sale Date for new Attractions that do not utilize seating charts then existing in the TM System and at least three (3) business days prior to the On-Sale Date for new Attractions that utilize seating charts then existing in the TM System.

(c) **Facility Box Office Will-Call Services:** At all times during the Term of this Agreement, Principal shall maintain a designated Facility Box Office location for the pick-up of Tickets purchased through Internet Sales and Telephone

Sales. The pick-up location shall be open during the normal hours of operation of the Facility Box Office. Principal shall notify Ticketmaster of Principal's will-call capabilities and will-call Facility Box Office hours. Principal shall verify the identity of each person picking up Tickets at will-call via a valid photo identification (government issued) and the credit card used in the Ticket sales transaction. Principal shall not release Tickets to any customer whose identity has not been so verified.

(d) **Supplies:** Principal shall be responsible for maintaining adequate nondurable operational supplies used at the Facility in connection with the operation of the Hardware and Software to assure continuous operations at the Facility.

(e) **Ticket Stock:** Principal shall be responsible for the security of Ticket stock in its possession, and the risk of loss of Ticket stock shall shift to Principal upon the delivery thereof to Principal or Principal's authorized representative, agent or employee.

6. **MAINTENANCE AND SUPPORT:**

(a) **Hardware and Software Maintenance and Support:** Ticketmaster shall provide ordinary and routine maintenance and repair services and adequate support of the Hardware and Software at the Facility to meet the reasonably anticipated service needs of Principal from time to time at no charge, provided that such maintenance, repair or support is not necessitated by the negligence or willful misconduct of Principal, its employees, agents or representatives. Support services will be provided, on a return call basis, during Ticketmaster's normal business hours by personnel qualified to answer telephone inquiries by Principal seeking advice on questions and problems. Non-emergency calls made at the end of the day, which require support services that would keep staff beyond normal working hours, will be deferred to the following business day. Support will be provided for off-hour critical system emergencies.

(b) **Training of Principal's Employees:** Principal shall staff the Facility Box Office with its employees for the proper operation of the TM System for Ticket sales made through the Facility. Ticketmaster shall train, at its expense, Principal's employees who shall be reasonably necessary for the initial staffing of the Facility Box Office and for initial operation of the TM System for single ticket sales at the Facility. Ticketmaster shall also provide additional training at its cost to other employees of Principal to the extent such training is necessary as a consequence of changes initiated by Ticketmaster or changes in Ticketmaster's method of operation. To the extent of any change in personnel by Principal in connection with Facility Box Office sales requiring additional training beyond that initially contemplated hereunder, Principal agrees to absorb all of the expenses (including any and all reasonable travel expenses) thereof.

(c) **Notification by Principal:** In the event of any breakdown or malfunction in the operation of any of the Hardware or Software, or difficulties encountered in connection with access to any of the Software, Principal agrees to promptly notify Ticketmaster of any such breakdown, malfunction or difficulty to assist Ticketmaster in performing its obligations hereunder.

(d) **Access to Principal's Equipment and Data:** Principal shall permit Ticketmaster, at Ticketmaster's sole discretion and upon reasonable written notice, the right at a reasonable time to inspect Principal's pertinent sites and equipment (including any existing LAN or other network user monitor device) for the purpose of determining compliance with the terms of the License granted hereunder. In order to correctly diagnose faults in the equipment and data related to the Software and Hardware, Principal will provide Ticketmaster 24 hour remote access to Principal's installation, pertinent sites, equipment (including any existing LAN or other network user monitor device) and user data through PC Anywhere. Failure to provide such access may prohibit effective action by Ticketmaster and render Ticketmaster unable to proceed, and in such circumstances, Ticketmaster shall be under no liability for failure to perform its obligations hereunder.

7. **ADVERTISING:**

(a) **Advertising on Tickets Fulfilled at Facility Box Office:** For tickets fulfilled by Principal at the Facility Box Office, Principal shall either (i) provide, or pay Ticketmaster to provide, its own blank custom ticket stock and ticket envelopes in which case Principal shall have the right to sell advertising on such ticket stock and ticket envelopes or (ii) have Ticketmaster provide Ticketmaster's standard ticket stock and ticket envelopes in which case Ticketmaster shall have the right to sell advertising on such ticket stock and ticket envelopes.

(b) **Ticketmaster Advertisements:** Principal hereby grants to Ticketmaster the right, in Ticketmaster's sole discretion, to advertise, in any medium determined by Ticketmaster, including on the TM.com Website or affiliated websites, Attractions and the availability of Tickets at the Facility Box Office, at all Outlets, and by Internet Sales and Telephone Sales and the availability of the Software and, in connection therewith, to use the name and logo of Principal, the Attraction, the Facility and all other information respecting the Attractions.

(c) **Principal Advertisements:** Principal may, during the Term hereof, provide and place advertisements in any form of media which Principal shall desire to promote the availability of Tickets, the TM.com Website and the Attractions (except on websites or other media operated by, or on behalf of, third parties that promote, engage in or facilitate the sale, resale or issuance of tickets); provided, however, that in the event Principal shall place any such advertisements, it shall use its best efforts to cause Ticketmaster's name, logos and if the advertisement relates to the availability of Tickets, the applicable TM.com Website address and charge-by-phone number and, if possible, the identity of the Outlets where Tickets may be purchased, to be displayed in the advertisement, as well as the address of the Facility. Principal shall cause Principal's Website to deeplink to specified web page(s) within the applicable TM.com Website where ticket purchasers can begin the process of purchasing Tickets to Attractions. Principal agrees to promote the availability of Tickets on the TM.com Website by including, at a minimum, one "above-the-fold" graphic Ticketmaster branded link to the TM.com Website on each web page featuring one or more of the Attractions on Principal's Website. Such link will include the TM.com Website graphic logo and a call to action such as "buy tickets."

(d) **Ticketmaster Client Style Guide:** The look of any and all links from Principal's Website to the Interface Page or the applicable TM.com Website are subject to Ticketmaster's prior approval, and such approval shall not be unreasonably withheld or delayed. Principal shall comply with all terms and conditions of Ticketmaster's Client Style Guide, as it may be updated from time to time.

(e) **Advertising Revenue:** Ticketmaster and Principal shall separately receive and retain their respective income derived from advertising which each is entitled to sell under subsections (a), (b) and (c) above.

8. **ACCOUNTING PROCEDURES:**

(a) **Weekly Payments by Ticketmaster:** Ticketmaster shall collect all Ticket Receipts derived from Ticket sales made by Ticketmaster and shall calculate the payment owed to the Civic Center ("Payment") for Ticket Receipts and Royalties. Ticketmaster shall mail a check in the full amount of the Payment to the Civic Center Director, at the address indicated herein below, on the Friday of each week, with each weekly Payment to be on account of TM System Ticket sales for Attractions that occurred during Monday through Sunday of the week preceding such Payment date. Each weekly Payment shall be accompanied by a written accounting prepared by or at the direction of Ticketmaster.

(b) **Cancelled Attractions; Refunds:** In the event that any Attraction for which Ticketmaster sold Tickets is cancelled, postponed, or modified (e.g., substitute acts) for any reason (each, a "Cancelled Attraction"), the Account Balance shall be held and made available for distribution by Ticketmaster to Ticket purchasers entitled to refunds for Tickets for Cancelled Attractions purchased from Ticketmaster. For purposes of this Agreement, the term "Account Balance" shall mean the amount of funds held at any time by Ticketmaster on account of Ticket sales for all Attractions, less the amount of Ticket sales proceeds which Ticketmaster is entitled to retain hereunder. Principal authorizes Ticketmaster to refund the Ticket price at the original point of purchase (e.g., at Outlets or by Internet Sales or Telephone Sales) in such manner (e.g. by crediting the consumer's credit card) and at such time (e.g. before or after the scheduled date of the performance of such Attraction) as Ticketmaster in its sole discretion determines, and to exchange Tickets pursuant to any exchange policy that may be adopted in writing by Principal and Ticketmaster. Where no such exchange policy has been adopted, Ticketmaster shall not exchange the Tickets. It is agreed and understood that Ticketmaster is the Ticket selling agent of Principal and therefore Ticketmaster's agreement to make any refunds as the agent of Principal is subject and limited to Ticketmaster holding or receiving from Principal the full amount of funds necessary to make refunds to all Ticket purchasers properly entitled to a refund. Principal and Ticketmaster agree that Ticketmaster shall be entitled to retain the Ticketmaster fees assessable with respect to the initial sale of Tickets to Cancelled Attractions and any other fees assessable although no additional compensation shall be payable to, or fee assessed by, Ticketmaster with respect to the exchange of any Tickets initially purchased from Ticketmaster. Principal shall be responsible for all refunds and exchanges of Tickets initially purchased from the Facility Box Office.

(c) **Insolvency; Deficiency Amounts; Security for Repayment:**

Principal shall provide immediate written notice to Ticketmaster in the event it files any voluntary or involuntary petition under the bankruptcy or insolvency laws or upon any appointment of a receiver for all or any portion of Principal's business or the assignment of all or substantially all of the assets of Principal for the benefit of creditors (each, a "Material Financial Event"). The parties agree that this Agreement constitutes a financial accommodation by Ticketmaster to Principal as such term is utilized in 11 U.S.C. §365. If at any time, the Account Balance is not sufficient to pay for anticipated refunds or Chargebacks, Principal shall deliver the amount of such deficiency ("Deficiency Amount") to Ticketmaster no later than twenty-four (24) hours after notice by Ticketmaster to Principal. Ticketmaster shall have the right to setoff any Deficiency Amount against any amounts held by Ticketmaster on behalf of Principal. In the event of any Material Financial Event or in the event Principal has not paid any Deficiency Amount when due, Ticketmaster shall have the option to require Principal to provide additional security to Ticketmaster of a type permitted by law and in a reasonable amount as requested by Ticketmaster in its sole discretion, which Principal shall provide to Ticketmaster within five (5) business days after Ticketmaster's request. In the occurrence of a Material Financial Event, Ticketmaster reserves the right to require Principal to provide current financial statements to Ticketmaster within five (5) business days after Ticketmaster's written request.

(e) **Counterfeit Tickets:**

It is agreed and understood that Ticketmaster shall not be liable to Principal for the printing and sale of counterfeit Tickets, including, without limitation, TicketFast Tickets, except to the extent that such printing and/or sale arises from the negligent acts or omissions or intentional misconduct of Ticketmaster, including without limitation its officers, agents, or employees. Principal shall not be liable to Ticketmaster for the printing and sale of counterfeit Tickets, including, without limitation, TicketFast Tickets, except to the extent that such printing and/or sale arises from the negligent acts or omissions or intentional misconduct of Principal, including without limitation its officials or employees.

(f) **Audit of Sales:**

At all times during the Term of this Agreement, (i) Principal shall have the right at its own expense to audit Ticket sales for Attractions by Ticketmaster to assure Ticketmaster's compliance with the terms of this Agreement, and (ii) Ticketmaster shall have the right at its own expense to audit Ticket sales for Attractions made by Principal and by others (including, without limitation, the promoter and sponsor of any Attraction, the act or event itself and Principal's Subscribers) to assure their compliance with the terms of this Agreement.

(g) **License and Maintenance Fees:**

Any initial or one time license or maintenance fees set forth on Exhibit A shall be due and payable upon the execution of this Agreement. Thereafter, installments of license or maintenance fees set forth on Exhibit A (other than supplemental license fees for MailManager) shall be invoiced and payable on the first day of each Contract Year during the Term. Ticketmaster shall deliver to Principal an invoice for the amount of the supplemental license fee for MailManager then due and payable, if any, from time to time as Ticketmaster determines, but not less frequently than on an annual basis.

(h) **Request for Taxpayer Identification Number and Certification:** Principal shall complete the required Form W-9 provided with this Agreement and return it to Ticketmaster with this Agreement for purposes of reporting to the Internal Revenue Service.

9. **TAXES:**

(a) **Taxes on Hardware:** Principal shall keep the Hardware free and clear of all levies, liens and encumbrances which are caused by Principal or under Principal's control. Principal shall promptly reimburse Ticketmaster for all license fees, registration fees, assessments, charges and taxes, whether federal, state, county, municipal or other governmental or quasi-governmental, with respect to the Hardware located at the Facility, including, without limitation, use, excise and property taxes, except and excluding, however, any taxes to the extent that said taxes are based on or measured by Ticketmaster's net income. Such reimbursement shall include penalties and interest with respect to fees and taxes listed above, but only where said penalties and fees arise from Principal's negligence or intentional misconduct.

(b) **Attraction Taxes:** Principal shall be responsible for calculating any and all Principal Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any such Principal Taxes, and for timely remitting Principal Taxes, if any, to the appropriate taxing authority. Ticketmaster will collect and turn over to Principal the amounts to which Principal is entitled as provided in Section 8(a). In the event that Ticketmaster pays any Principal Taxes on behalf of Principal or Ticketmaster pays any Principal Taxes due to a failure by Principal to provide Ticketmaster with the required writing or documentation of any Principal tax exemptions pursuant to Section 9(d) below, Principal shall promptly reimburse Ticketmaster for any and all such Principal Taxes paid by Ticketmaster, including penalties and interest assessed with respect thereto (other than Principal Taxes, penalties and interest that Ticketmaster pays directly out of Principal's Ticket Receipts), and shall also promptly reimburse Ticketmaster for any and all expenses (including reasonable attorneys' fees) or damages incurred by Ticketmaster that result from the failure by Principal to properly calculate and timely remit Principal Taxes assessed on all amounts received by Principal under this Agreement, to timely file all related returns or reports, or to timely reimburse Ticketmaster for any and all such Principal Taxes, interest and penalties as provided above. Notwithstanding the foregoing, in the event that Ticketmaster is ever required by applicable law to remit Principal Taxes directly on behalf of Principal and file related tax returns or reports, Ticketmaster shall have the right to do so upon notice to Principal, and thereafter "Ticket Receipts" shall be defined to be reduced by such Principal Taxes. Ticketmaster shall be responsible for calculating any and all Ticketmaster Taxes, for preparing and timely filing any and all tax returns or reports required to be filed in respect of any such Ticketmaster Taxes, and for timely remitting such Ticketmaster Taxes to the appropriate taxing authority. Ticketmaster shall promptly reimburse Principal for any and all expenses (including reasonable attorneys' fees) or damages incurred by Principal that result from the failure by Ticketmaster to properly calculate and timely remit Principal Taxes, to timely file all related returns or reports, or to timely reimburse Principal for any and all such Principal Taxes, interest and penalties as provided above, paid or incurred by Principal.

(c) **Principal's Taxpayer ID Number:** Principal certifies that Principal's federal taxpayer identification number (FEIN or SSN) is _____. Principal further certifies that its state taxpayer identification or registration number for the state in which the Facility is located is _____.

(d) **Principal's Tax Exemptions:** Principal shall notify Ticketmaster in writing of any and all Principal tax exemptions (if applicable) and provide Ticketmaster with reasonable proof of Principal's tax exemptions.

(e) **Taxes on License and Maintenance Fees:** The license and maintenance fees set forth on Exhibit A are exclusive of any sales, use, value added, excise or other taxes, and Principal shall be responsible for paying all such applicable taxes.

10. **LOSS AND DAMAGE TO THE HARDWARE; INSURANCE:**

(a) Principal acknowledges that the Hardware will be used by Principal at the Facility and that Ticketmaster does not own, operate or control such location. Accordingly, Principal hereby assumes and shall bear the entire risk of loss and damage to the Hardware, ordinary wear and tear excepted, whether or not insured against, once installed, unless and to the extent occasioned by the acts or omissions of Ticketmaster, including without limitation its officers, employees, and agents, from any and every cause whatsoever from the date of delivery of the Hardware to the Facility or Principal site until removal thereof following termination of this Agreement. No such loss or damage to the Hardware shall impair any obligation of Principal under this Agreement, except where such loss or damage arises from the acts or omissions of Ticketmaster, including without limitation its officers, employees, and agents. In the event of loss or damage of any kind to any Hardware, Principal, at its sole option, shall within thirty (30) days after such loss or damage:

(i) Replace the same with similar property, in good repair, condition and working order to the reasonable satisfaction of Ticketmaster; or

(ii) Pay Ticketmaster the full replacement cost of the Hardware, and Ticketmaster shall promptly install new hardware to replace the lost or damaged Hardware.

(b) Principal shall, at its own expense, provide and maintain at all times during the Term hereof insurance to protect the Hardware against loss caused by fire (with extended coverage), vandalism, malicious mischief, theft, or any other cause in an amount equal to the full replacement value of the Hardware as determined by Ticketmaster. Should Principal become unable to provide or maintain such insurance coverage, Principal shall promptly notify Ticketmaster in writing prior to the expiration of any such coverage, and, thereafter, Ticketmaster shall have the right, but shall not be obligated, to provide insurance coverage for the occurrences specified above and charge Principal the costs of such insurance coverage.

(c) Principal shall provide, at its sole expense, comprehensive or commercial general liability and property damage insurance with minimum limits of

\$1,000,000 per occurrence and \$2,000,000 in the aggregate for its protection and the protection of Ticketmaster.

(d) All insurance provided and maintained by Principal shall be in such amounts, under such forms of policies pursuant to this Section shall provide for the waiver of the insurer's right of subrogation against Principal and Ticketmaster. All policies of insurance shall name Ticketmaster as an additional insured and shall provide for at least thirty (30) days' prior written notice of cancellation, non-renewal or material modification to Ticketmaster. Principal shall furnish Ticketmaster with certificates of such insurance or other evidence satisfactory to Ticketmaster as to its compliance with the provisions of this Section.

11. **TITLE:**

(a) **Hardware/Software:** Principal covenants and agrees that the Software and Hardware and any deliverables or work product furnished under this Agreement are, and shall at all times be and remain, personal property which shall, at all times, remain the sole and exclusive property of Ticketmaster, and Principal shall have no right, title or interest therein or thereto except as a licensed user thereof. Principal acknowledges and agrees that Ticketmaster has invention rights, copyrights, and other intellectual property rights in the TM System and the information contained therein which prohibit copying, sale, modification and re-manufacture of the TM System and information regarding the TM System and which will be enforced. Principal hereby agrees that it will, whenever reasonably requested by Ticketmaster, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, agreements, instruments, and documents legally necessary or reasonably desired by Ticketmaster, in a form satisfactory to protect the rights and ownership of Ticketmaster to and of the Software and Hardware. This documentation may include but not limited to certificates from parties with a real property interest in the premises wherein the Hardware may be located waiving any intellectual property rights with respect to the Hardware. Except as may be necessary to prevent damage to or destruction of the Hardware, Principal will not move the Hardware nor permit such Hardware to be moved without Ticketmaster's prior written consent, which consent shall not be unreasonably withheld, and shall give Ticketmaster prompt written notice of any attachment or other judicial process affecting any item of Hardware. Upon the expiration or termination of this Agreement, Principal shall return the Software and Hardware to Ticketmaster in good repair, condition and working order, except for ordinary wear and tear resulting from proper use thereof, or except where the other condition is created at least in part by the acts or omissions of Ticketmaster, including without limitation its officers, employees, and agents,. At the time of such expiration or termination of this Agreement, any and all licenses and other rights to the Software and Hardware shall terminate with respect to Principal.

(b) **Intellectual Property:** Each party shall retain all right, title and interest in and to its respective trademarks, service marks and trade names worldwide ("Intellectual Property") subject to a limited non-exclusive, non-transferable license necessary to perform this Agreement. Each party grants the other a royalty-free, non-exclusive, non-transferable license, during the Term, within the territory, to include such party's pre-approved Intellectual Property solely in connection with the promotions and

marketing contemplated in this Agreement. Each party shall use the other's Intellectual Property only as provided, and shall not alter the Intellectual Property in any way, nor shall it act or permit action in any way that would impair the rights of owning party in its Intellectual Property. Each party acknowledges that its use of the other party's Intellectual Property shall not create any right, title or interest in or to such Intellectual Property. Each party shall have the right to monitor the quality of the other party's use of its Intellectual Property. Additionally, each party shall notify the other promptly in writing of any known infringement of the other's Intellectual Property. Any references to a party's Intellectual Property shall contain the appropriate trademark, copyright or other legal notice provided from time to time by owning party.

(c) **Purchaser Data:** Principal and Ticketmaster each has rights in the personally identifiable information with respect to persons who actually purchased tickets to Principal's Attractions through Ticketmaster (whether by outlets, Telephone Sales, or Internet Sales) ("Purchaser Data"), subject to the terms hereof. Each party agrees to use the Purchaser Data only in compliance with all applicable laws and administrative rulings and in accordance with such party's own posted privacy policies. Principal agrees that if any portion of the Purchaser Data includes a person's name and that person's (i) social security number; (ii) driver's license or government identification number; or (iii) password and account identification, then Principal shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Purchaser Data to protect the Purchaser Data from unauthorized access, destruction, use, modification or disclosure. Principal also agrees that if any portion of the Purchaser Data includes credit or debit card numbers and related information, Principal shall comply with payment card industry standards. Principal shall also include in any email communications that Principal may make based on the Purchaser Data a mechanism to provide the recipient with the right to "opt-out" from receiving further communications from Principal and Principal shall honor such opt-out preferences.

12. **CONFIDENTIAL INFORMATION:**

(a) The parties acknowledge that by reason of their relationship hereunder, they may from time to time disclose to each other information regarding their business, products, software technology, Intellectual Property and other information that is confidential and of substantial value to the other party, which value would be impaired if such information were disclosed to third parties ("Confidential Information"). The provisions of this Agreement shall be deemed to be Confidential Information.

(b) Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of the breach of the confidentiality obligations in this Agreement by the receiving party, (ii) is or has been independently acquired or developed by the receiving party without violating any of the confidentiality obligations in this Agreement, (iii) was within the receiving party's possession prior to it being furnished to the receiving party by or on behalf of the disclosing party, or (iv) is received from a source other than the disclosing party; provided that, in the case of (iii) and (iv) above, the source of such information was not known by the receiving party to be bound by a confidentiality obligation to the disclosing party or any other party with respect to such information.

(c) Each party agrees that it will keep the Confidential Information strictly confidential and will not use in any way for its own account or the account of any third party, nor disclose to any third party, any Confidential Information revealed to it by the other party without the other party's prior written consent, except to the extent expressly permitted by this Agreement or required by law, including without limitation by the Georgia Open Records Act; provided, however, that the receiving party may disclose the Confidential Information, or any portion thereof, to its directors, officers, employees, legal and financial advisors, controlling persons and entities who need to know such information to perform such party's obligations under this Agreement and who agree to treat the Confidential Information in accordance with the confidential obligations in this Agreement. Each party shall use the same degree of care to avoid disclosure or use of the other party's Confidential Information as it employs with respect to its own Confidential Information of like importance.

(d) In the event that either party receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena, document request, notice of deposition or other legal proceeding, such party agrees to notify the other pursuant to Section 17(h) below, within forty-eight (48) hours after receipt of such legal document, and such party agrees to reasonably cooperate with the other in any attempt to obtain a protective order.

13. **LIMITATION ON LIABILITY:** In no event shall Ticketmaster or Principal be liable for any indirect, consequential, exemplary, or punitive damages, or for events or circumstances beyond Ticketmaster's or Principal's control (as applicable), even if Ticketmaster or Principal respectively has been advised of the possibility of such damages. Neither occasional short term interruptions of service which are not unreasonable under comparable industry standards, nor interruptions of service arising as described in Section 18(f) below shall be cause for any liability or claim against Ticketmaster or Principal hereunder, nor shall any such occasion render Ticketmaster or Principal in default under this Agreement.

14. **INDEMNIFICATION:**

(b) Ticketmaster shall indemnify Principal and its officials, employees and agents and their successors and assigns (collectively, for purposes of this Section, "Principal's Indemnitees") against, and hold Principal's Indemnitees harmless from, any and all claims, actions, damages, expenses (including court costs and reasonable attorneys' fees), obligations, losses, liabilities and liens, imposed on, incurred by, or asserted against, Principal's Indemnitees occurring as a result of, or in connection with: (i) any Event of Default under this Agreement by Ticketmaster; or any of its officers, directors, employees and agents or (ii) any alleged patent, trademark or copyright infringement asserted against Principal's Indemnitees with respect to Principal's use of the TM System; except, in each case, to the extent that any such claim shall relate to Principal's negligence or willful misconduct with respect thereto.

(c) The indemnified party must notify the other party promptly in writing

of any claim hereunder, and provide, at such other party's expense, all reasonably necessary assistance, information and authority to allow the other party to control the defense and settlement of such claim.

15. **TERMINATION:**

(a) This Agreement may be terminated by either party in the event of any material default in or material breach of the terms and conditions of this Agreement by the other party, after the other party has received written notice of default and thirty (30) business days to cure such default (each such occurrence, after the expiration of such cure period, shall be an "Event of Default"); or the filing of any voluntary or involuntary petition against the other party under the bankruptcy or insolvency laws of any applicable jurisdiction, which petition is not dismissed within sixty (60) days of filing, or upon any appointment of a receiver for all or any portion of the other party's business, or any assignment of all or substantially all of the assets of such other party for the benefit of creditors. Upon an Event of Default by Ticketmaster, Ticketmaster shall, without demand, forthwith pay to Principal all amounts due and owing pursuant hereto; and Principal shall pay to Ticketmaster all amounts due and owing pursuant hereto; and Principal may, in addition to terminating this Agreement, require Ticketmaster to remove all Hardware from the Facility. Upon an Event of Default by Principal, Principal shall, without demand, forthwith pay to Ticketmaster all amounts due and owing pursuant hereto; and Ticketmaster shall pay to Principal all amounts due and owing pursuant hereto; and Principal authorizes Ticketmaster to setoff any amounts owed to Ticketmaster hereunder against any amounts held by Ticketmaster on behalf of Principal; and Ticketmaster may, in addition to terminating this Agreement, terminate Principal's right to access and use the TM System and take immediate possession of the Hardware and Software wherever the same may be located without demand, notice or court order.

(b) This Agreement may be terminated on ten (10) days' prior written notice, at the sole discretion of Ticketmaster in the event that more than 50% of Principal's assets or voting stock is sold or otherwise assigned to a third party.

(c) This Agreement may be terminated by Ticketmaster in the event any act by Principal threatens to cause any infringement of any Ticketmaster (or Ticketmaster licensor) intellectual property or other property right, including without limitation, any copyright, license right or trade secret right, and Principal fails to refrain from so acting within ten (10) business days' written notice from Ticketmaster.

(d) Upon the effective date of any termination or expiration of this Agreement, provisions regarding ownership of intellectual property rights, representations and warranties, confidentiality, indemnification, limitation of liability, non-solicitation, jurisdiction, and venue, as set forth in this Agreement, shall remain in full force and effect; each party shall immediately cease the use of the other party's Intellectual Property; and each party shall return, or at the other party's request, destroy all copies of Confidential Information, and all other property belonging to and/or received from the other party.

(e) No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy herein or otherwise available at law or in equity, each and all of which are subject to the limitations contained in Section 13 hereof.

16. **NON-SOLICITATION:** Each party covenants that, for a period of one (1) year immediately following the natural termination or expiration of this Agreement for any reason, whether with or without cause, such party shall not either directly or indirectly (a) solicit, induce, recruit or encourage any employees of the other party to leave their employment; (b) attempt to solicit, induce, recruit, encourage or take away employees of the other party; (c) solicit, divert or take away or attempt to solicit, divert or take away any of either party's clients; or (d) undertake any employment or activity competitive with such party wherein the fulfillment of the duties of the competitive employment or activity would call upon an employee to reveal or use any of its proprietary information.

17. **DEFINITIONS:** As used in this Agreement, the following terms shall have the respective meanings indicated below unless the context otherwise requires:

"AccessManager" means the Ticketmaster AccessManager software which interfaces with the TM System to facilitate certain reporting systems and to provide various enhanced services to the patron admissions process through the use of bar codes or other media printed on Tickets.

"Attraction" means a concert, sporting, entertainment or other act or event of any kind or nature whatsoever to be held at the Facility.

"Attraction Taxes" means any and all sales, amusement, admissions and other taxes, charges, fees, levies or other assessments measured by reference to a charge per Ticket sold or determined based upon the purchase price of a Ticket assessed by federal, state, county, municipal or other governmental or quasi-governmental authorities as a result of, or in connection with, any Attraction, including Principal Taxes and Ticketmaster Taxes as further described below. To the extent such taxes relate to the funds paid or owed to Principal under this Agreement such portion of Attraction Taxes may also be referred to herein as Principal Taxes, and to the extent such taxes relate to portions of service charges (e.g. Convenience Charge, Processing Fee, etc.) collected and retained by Ticketmaster under this Agreement, such portion of Attraction Taxes may also be referred to herein as Ticketmaster Taxes.

"Auction Base" means the Face Value of a Ticket plus the related Convenience Charge for such Ticket.

"Auction Fee" means the amount Ticketmaster charges consumers for purchasing Tickets sold via a Ticketmaster online auction.

"Auction Lift" means the difference between the ultimate price a consumer pays for a Ticket sold via a Ticketmaster online auction less the Auction Base.

"Chargebacks" is defined in Section 8(c) hereof.

"Confidential Information" is defined in Section 12 hereof.

"Contract Year" is defined in Section 1 hereof.

"Convenience Charge" means the per Ticket amount charged by Ticketmaster to a consumer for the convenience of purchasing Tickets through the TM System.

"Delivered E-mails" means all e-mails generated by Principal using MailManager that are not indicated as having been returned to Principal as "undeliverable" in Ticketmaster's records.

"Electronic Payment Fees" is defined in Section 3(b).

"Event of Default" is defined in Section 15(a) hereof.

"Face Value" means the face price of a Ticket as determined by Principal, which shall be inclusive of all applicable Attraction Taxes and facility, parking and similar fees.

"Facility" means any venues owned, controlled, operated or managed by Principal or where Principal otherwise controls the rights or has the authority to sell tickets to any event, including, but not limited to the venue(s) located at 395 Piedmont Avenue NE, Atlanta, GA 30308 and currently known as the Atlanta Civic Center.

"Facility Box Office" means the Facility's Ticket sales locations that are operated by Principal and located at the Facility.

"Group Sales" means sales of Tickets by Principal to a group consisting of at least fifteen (15) people for use by the group members to attend an Attraction as a group. In no event shall Group Sales consist of the sale of Tickets to individuals to attend an event separately or for individuals to purchase Tickets with the intent to resell such Tickets.

"Hardware" means all of that certain computer hardware, communications equipment, terminals and hook-ups (including replacements thereof) listed with particularity on Exhibit B or otherwise supplied by Ticketmaster to Principal at any time during the Term of this Agreement, but excluding (i) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal to provide the connectivity to and interfacing with the TM System required under this Agreement, and (ii) any computer hardware, communications equipment, terminals and hook-ups purchased by Principal from Ticketmaster.

"House Seats" means Tickets provided by Principal (i) to the Attraction's promoter, performing act or event, or their managers or agents (i.e. band holds); (ii) for distribution through legitimate fan clubs in accordance with current guidelines (i.e. fan club holds); or (iii) for legitimate promotional purposes (e.g. radio station promotions); provided that House Seats Tickets shall not be distributed to the general public.

"Inside Charges" means the amounts Ticketmaster charges Principal to sell, issue and process Tickets utilizing the TM System under this Agreement.

"Intellectual Property" is defined in Section 11(b) hereof.

"Internet Sales" means all sales of Tickets over the Internet.

"License" is defined in Section 4(a) hereof.

"MailManager" means the Ticketmaster MailManager software and hosting services that allows Principal to build a permissible marketing database and supports targeted, trackable direct email communication to Principal's customers.

"Outlet" means a retail Ticket selling agency (other than the Facility Box Office) where Tickets for an Attraction are made available and offered for sale to the public through the TM System.

"Principal's Website" means an Internet website(s) owned, operated and maintained by Principal.

"Processing Fee" means the per order amount charged by Ticketmaster to a consumer for purchasing Tickets via Internet Sales or Telephone Sales through the TM System.

"Purchaser Data" is defined in Section 11(c) hereof.

"Royalties" is defined in Section 3(c)(i) hereof.

"Sale and sell" and any derivations thereof in this Agreement shall include any distribution for consideration, by any means or method (including without limitation, on the Internet or by auction) and shall include resales.

"Season/Contract Tickets" means specifically designated Tickets sold directly by Principal on an annual basis across all Attractions or across all of a category of Attractions (i.e., luxury suites, club level seats and season tickets).

"Sellable Capacity" means the admission capacity of the Facility for any particular Attraction, as determined by the City of Atlanta's Department of Fire and Rescue or any other governmental entity with jurisdiction over the Facility.

"Signing Bonus" is defined in Section 3(c)(iii) hereof.

"Software" means Ticketmaster's ticketing system software known and marketed as Ticketmaster Classic, AccessManager, MailManager and any new versions thereof or any other deliverables for TM System access provided to Principal by Ticketmaster during the Term.

"Telephone Sales" means all sales of Tickets through the TM System by telephone, interactive voice response (IVR) and similar means.

"Term" is defined in Section 1 hereof.

"Ticket" means a printed, electronic or other type of evidence of the right to occupy space at or to enter or attend an Attraction even if not evidenced by any physical manifestation of such right, such as a "smart card", including, without limitation, tickets printed via TicketFast print-at-home technology.

"TicketFast®" means the TM.com Website method of Ticket delivery which allows purchasers to print Tickets from a computer.

"Ticket Receipts" means the Face Value of a Ticket sold by Ticketmaster less any applicable Inside Charges, Electronic Payment Fees or Ticketmaster Taxes, and less any Principal Taxes if Ticketmaster is required to remit Principal Taxes to any taxing authority.

"TM.com Website" means any Internet websites owned, operated and maintained by Ticketmaster, including, without limitation, any co-branded versions and any version distributed through any broadband distribution platform or through any platform or device including television, broadband and wireless technologies.

"TM System" means the Hardware, Software, TM.com Website, related procedures and personnel, and repair and maintenance services established and maintained by Ticketmaster and its affiliates for the purpose of selling, distributing, auditing and controlling the sale of Tickets for Attractions, including, without limitation, at Outlets, by Internet Sales, by Telephone Sales and the processing of transactions through the Software.

18. **MISCELLANEOUS:**

(a) **Governing Law/Jurisdiction:** This Agreement shall be interpreted and governed by the laws of the State of Georgia, without reference to conflict of laws principles. Each of the parties hereto agrees that the state courts, and the United States federal courts, that are located in the State of Georgia shall each have subject matter jurisdiction hereunder and personal jurisdiction over each of the parties hereto. Each such party hereby consents thereto, and hereby waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent that any proceeding is conducted in accordance with the foregoing provision.

(b) **Waiver of Jury Trial:** In the event the parties are required for any reason to submit any dispute hereunder to trial, the parties expressly agree to waive the right to a jury trial, because the parties hereto, all of whom are represented by counsel, believe that the complex commercial and professional aspects of their dealing with one another make a jury determination neither desirable nor appropriate.

(c) **Entire Agreement; Modification:** This Agreement constitutes the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof and supersedes and cancels all previous oral or written communications, proposals, agreements, and commitments. No modification to this Agreement, nor any waiver of any rights, shall be effective unless assented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default. A party's delay in enforcing its rights hereunder shall not be construed as a waiver of such rights or remedies.

(d) **Assignment:** Without the prior written consent of Ticketmaster, Principal shall not (i) directly or indirectly assign, transfer, pledge or hypothecate its rights or obligations in this Agreement or any interest therein; or (ii) permit the Hardware (if any) or any part thereof to be used, or access to the Software or any part thereof to be had, by anyone other than Principal or Principal's authorized employees. Any such assignment shall not relieve Principal of any of its obligations hereunder. Without the prior written consent of Principal, Ticketmaster shall not assign or transfer its rights or obligations in this Agreement or any interest therein, except in the event of an assignment by Ticketmaster to any parent, subsidiary, affiliate or successor-in-interest (including, without limitation, a successor by virtue of an acquisition), in which event no such consent shall be required. Any assignment, transfer, pledge or hypothecation for which consent is required hereby and which is made without such consent shall be void. Notwithstanding the foregoing, Principal agrees and acknowledges that certain of Ticketmaster's duties and obligations under this Agreement may be performed on Ticketmaster's behalf by one or more of its parent, subsidiaries and affiliates, and no such performance shall be deemed to be an assignment or breach of this Agreement by Ticketmaster. In the event Principal assigns this Agreement pursuant to this Section, Principal shall either (1) remit the outstanding balance of any Signing Bonus to Ticketmaster or (2) require in writing that Principal's permitted assignee expressly agrees to assume this Agreement, including responsibility for the return of any unpaid amount of any Signing Bonus to Ticketmaster in the event the outstanding amount of the Signing Bonus is not fully earned by Principal or such assignee and fully recouped by Ticketmaster during the term of this Agreement, but in no event would such assumption relieve Principal of its obligation related to any unpaid Signing Bonus.

(e) **Relationship of the Parties:** Each party is an independent contractor and not an agent or partner of, or joint-venturer with, the other party for any purpose other than as set forth in this Agreement (e.g., Ticketmaster is the agent of Principal with respect to ticket sales and distribution). Neither party by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

(f) **Delays:** Neither party shall be liable or deemed in default, and no Event of Default shall be deemed to have occurred, as a result of any delay or failure in performance of this Agreement resulting directly or indirectly from any cause completely, solely and exclusively beyond the control of that party, but only for so long as such delay shall continue to prevent performance.

(g) **Severability**: If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect.

(h) **Notices**: Any notices required to be given under this Agreement must be sent to each party, in writing, at the address set forth immediately below the signature line hereto or at such address as may be provided by each party in writing from time to time, by certified or registered mail, return receipt requested or by an overnight courier. Notices will be deemed effective the day following sending if sent by overnight courier or five days after sending if sent by certified or registered mail. Settlement reports and other routine correspondence, as agreed upon in writing by the parties, may be delivered between Ticketmaster and Principal by email; therefore each party shall promptly notify the other of any change to its email address set forth immediately below the signature line hereto.

(i) **Binding Agreement/Counterparts**: The terms, conditions, provisions and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns; provided, however, that this Agreement shall not be binding until executed by each of the parties.

(j) **Legal Review**: Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. The parties expressly agree that the construction and interpretation of this Agreement shall not be strictly construed against the drafter.

Comment [C1]: The City, as a policy, does not agree to expose itself to this kind of liability.

(l) **Client Listings**: Principal's execution of this Agreement indicates approval for Principal to be listed as a Ticketmaster client in monthly newsletters for distribution to event industry clients, in product boiler plate information, and in future releases about Ticketmaster products and services for distribution to trade and consumer media. At any time, Principal may, in its sole discretion, direct Ticketmaster to stop using Principal's name for the purposes listed in this Section by sending notice to Ticketmaster via email at mediarequest@ticketmaster.com.

(m) **Survival of Terms**: Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement, including without limitation provisions related to use of the Software, purchaser data, limitations on liability, indemnification, confidential information, governing law and waivers of jury trials, shall survive any termination or expiration of this Agreement and continue in full force and effect.

IN WITNESS WHEREOF, Ticketmaster and Principal have caused this Licensed User Agreement to be duly executed as of the date set forth below.

TICKETMASTER L.L.C.,
a Virginia limited liability company

CITY OF ATLANTA,
by and through the Boisfeuillet Jones
Atlanta Civic Center

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: 100 Peachtree Street
Suite 2600
Atlanta, GA 30303

Address: 395 Piedmont Avenue NE
Atlanta, GA 30308

Attn: General Manager

email address: _____

With a copy to:

Ticketmaster L.L.C.
100 Peachtree Street
Suite 2600
Atlanta, GA 30303
Attn: Executive Vice President,
South East Region

With a copy to:

Attn: _____

and with a copy to:

Ticketmaster L.L.C.
8800 Sunset Boulevard
West Hollywood, CA 90069
Attn: General Counsel

EXHIBIT A
COMPENSATION

1. **Ticketmaster Charges and Fees.**

(a) **Convenience Charge (Per Ticket):**

<u>Face Value of Ticket</u>	<u>Convenience Charge – Outlet Sales, Telephone Sales and Internet Sales</u>
\$6.99 and below	\$3.00
\$7.00 to \$10.00	\$3.50
\$10.01 to \$15.00	\$4.50
\$15.01 to \$19.99	\$5.25
\$20.00 to \$24.99	\$5.50
\$25.00 to \$29.99	\$6.00
\$30.00 to \$40.00	\$6.50
\$40.01 to \$50.00	\$7.00
\$50.01 to \$60.00	\$7.75
\$60.01 to \$70.00	\$8.25
\$70.01 to \$80.00	\$9.25
\$80.01 to \$90.00	\$9.75
\$90.01 to 100.00	\$10.25
\$100.01 and above	- to be mutually determined -

The Convenience Charges set forth above shall be subject to automatic increase on the first day of the second Contract Year and on the first day of every other Contract Year thereafter during the Term in the amount of \$0.35 per Ticket.

(b) **Processing Fee (Per Order):**

<u>Type of Sale</u>	<u>Processing Fee</u>
Outlet sales	\$0.00
Telephone Sales and Internet Sales	\$4.00

The Processing Fees set forth above shall be subject to increase from time to time consistent with Ticketmaster's processing fee for similar events at similar facilities and subject to automatic increase equal to any increase (rounded up to the nearest \$0.05) to the postal service rates.

(c) **Inside Charges:**

<u>Type of Sale</u>	<u>Inside Charge</u>
Outlet sales	\$0.00 per Ticket
Telephone Sales and Internet Sales	Electronic Payment Fees set forth below
Other Tickets (including complimentary Tickets) printed by or on behalf of Principal	\$0.00 per Ticket

(d) **Auction Fee**: 12.9% of the Auction Lift.

(e) **MailManager Fees**:

(i) **Set-Up Fee**: \$2,500 (one-time) - **WAIVED**

(ii) **Annual License Fees**:

<u>Base License Fee Per Year</u>	<u>Number of Delivered E-Mails Included in the Plan Per Year</u>	<u>Supplemental License Fee Per Year</u>
\$10,000 - Waived	200,001 to 1,000,000 Delivered E-Mails	\$0.01 per each Delivered E-Mail over 1,000,000 during any year

2. **Electronic Payment Fees**:

<u>Type of Sale</u>	<u>Percentage Rate</u>
Telephone Sales and Internet Sales	2.5% of Face Value of Tickets
Outlet Sales	2.77% of Face Value of Tickets
Auction Sales	0% of Auction Lift and applicable taxes

Any percentage rates set forth above are subject to automatic increase due to increases in the interbank rates imposed on Ticketmaster.

3. **Compensation to Principal**.

(a) **Principal's Royalties**:

<u>Type of Royalty</u>	<u>Amount of Royalty</u>
Convenience Charge	20% of the Convenience Charge
Processing Fee	25% of the Processing Fee

EXHIBIT B
HARDWARE

1. Facility Box Office Hardware

<u>Quantity</u>	<u>Description</u>	<u>Value</u>
4	CRTs	\$3,600
3	Ticket Printers	\$3,000
1	Report Printer	\$ 163
1	Router	\$1,500
1	LRE Projector	\$ 300
1	Switch	\$ 500

2. AccessManager Hardware

<u>Quantity</u>	<u>Description</u>	<u>Value</u>
8	Scanners	\$6,348
5	Access Point Units	\$2,500
1	Network Server	\$2,500

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) in _____ ☐ Sole proprietor
☐ Other (see instructions) in _____

Address (number, street, and apt. or suite no.)

City, state, and ZIP code

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 2.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person in

Date in

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

**A RESOLUTION BY
FINANCE/EXECUTIVE COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO A LICENSED USER AGREEMENT WITH TICKETMASTER L.L.C., FOR TICKET SALES RIGHTS AT THE BOISFEUILLET JONES ATLANTA CIVIC CENTER; AND FOR OTHER PURPOSES.

WHEREAS, the Boisfeuillet Jones Atlanta Civic Center ("Civic Center") is an event hall that provides a host of entertainment attractions such as concerts, exhibits, shows and other events in the City of Atlanta ("City"); and

WHEREAS, the Civic Center is operated as a City enterprise fund; and

WHEREAS, the City, by and through the Civic Center, desires to enter into a Licensed User Agreement ("Agreement") with Ticketmaster L.L.C. ("Ticketmaster"); and

WHEREAS, the Agreement would allow Ticketmaster the right to be the exclusive seller of tickets to every attraction at the Civic Center, except that the Civic Center would still operate or cause to be operated the Civic Center Box Office; and

WHEREAS, the Agreement will provide substantial financial benefit to the Civic Center through ticket sale royalties and a signing bonus, both of which are more fully described in Exhibit "A" (hereto attached as Exhibit "A"); and

WHEREAS, the term of this Agreement shall be for a period of three (3) years with successive two (2) year renewal options as more fully described in Exhibit "A"; and

WHEREAS, the Director of the Civic Center and the Chief Procurement Officer have recommended that a Licensed User Agreement be executed between the City and Ticketmaster for the provision of ticket sales at the Civic Center.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

The Mayor or her designee, on behalf of the City, is hereby authorized to enter into a Licensed User Agreement with Ticketmaster L.L.C., and the terms of said Agreement shall provide at a minimum that:

- 1) Ticketmaster shall have the right to be the exclusive seller of tickets to every attraction at the Civic Center, except that the Civic Center may still operate or cause to be operated the Civic Center Box Office.
- 2) Ticketmaster shall provide to the Civic Center 20% of the Ticketmaster Convenience Charge received per ticket, and 25% of the Ticketmaster Processing Fee received per ticket.
- 3) Ticketmaster shall provide to the Civic Center a one-time signing bonus of \$50,000.

BE IT FURTHER RESOLVED, that the term of this Agreement shall be for a period of three (3) years. The Agreement may be renewed for successive two-year terms contingent upon written approval by Ticketmaster and the Civic Center Director. Council approval shall not be required for approval of renewals.

BE IT FURTHER RESOLVED, that all funds received by the Civic Center pursuant to the Agreement be deposited into _____ (get from Finance).

BE IT FURTHER RESOLVED, that the City Attorney or his designee is hereby authorized to prepare an appropriate Agreement for execution by the Mayor.

BE IT FINALLY RESOLVED, that this Agreement shall not become binding on the City, and the City shall incur no liability upon the same until the Agreement has been approved by the City Attorney or his designee as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to Ticketmaster L.L.C.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Finance/Executive Committee

Caption: A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO A LICENSED USER AGREEMENT WITH TICKETMASTER L.L.C., FOR TICKET SALES RIGHTS AT THE BOISFEUILLET JONES ATLANTA CIVIC CENTER; AND FOR OTHER PURPOSES.

Council Meeting Date: December 7, 2009

Requesting Dept.: Department of Parks, Recreation and Cultural Affairs

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to enter into a License User Agreement with Ticketmaster L.L.C. for ticket sales rights at the Boisfeuillet Jones Atlanta Civic Center.

2. Please provide background information regarding this legislation.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):**

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) Term of Contract:

4. Fund Account Center:

5. Source of Funds:

6. Fiscal Impact:

7. Method of Cost Recovery:

This Legislative Request Form Was Prepared By:

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Debra F. Harris

Contact Number: (404) 817-6795

Originating Department: Department of Parks, Recreation and Cultural Affairs

Committee(s) of Purview: Finance/ Executive Committee

Chief of Staff Deadline: November 17, 2009

Anticipated Committee Meeting Date(s): December 1, 2009

Anticipated Full Council Date: December 7, 2009

Legislative Counsel's Signature: Robin Shahar *RS*

Commissioner Signature: Dianne Harnell Cohen, by RTS

Chief Procurement Officer Signature: Adam Z. Sisk *AS*

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR OR HER DESIGNEE, ON BEHALF OF THE CITY, TO ENTER INTO A LICENSED USER AGREEMENT WITH TICKETMASTER L.L.C., FOR TICKET SALES RIGHTS AT THE BOISFEUILLET JONES ATLANTA CIVIC CENTER; AND FOR OTHER PURPOSES.

Mayor's Staff Only

Received by CPO: _____
(date)

Received by LC from CPO: _____
(date)

Received by Mayor's Office: 11/17/09

(date)

Reviewed by: JS

(date)

Submitted to Council: _____